

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

-----X
JEFF SCHMIDT,

Plaintiff,

-against-

AMERICAN INSTITUTE OF PHYSICS,

Defendant.
-----X

Civil Action No.: 1:03CV01691
(RMU)

**DEFENDANT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO TRANSFER
VENUE FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF
COLUMBIA TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MARYLAND, SOUTHERN DIVISION**

Plaintiff Jeff Schmidt brings this action challenging his discharge from employment with Defendant American Institute of Physics (AIP). In his Memorandum in Opposition to AIP's Motion to Transfer Venue ("Plaintiff's Opposition"), Schmidt claims that the "pretext" for his discharge was Defendant's dissatisfaction with "ideas" presented in a book he recently had written. Plaintiff's Opposition at 2. Plaintiff's claim is spurious and without merit. The only reason AIP terminated Mr. Schmidt's at-will employment was because in the book Schmidt wrote and published in 2000, he publicly proclaimed that he had "stolen" work time from AIP in order to write the book. The Introduction to Schmidt's book, entitled *Disciplined Minds*, states:

This book is stolen. Written in part on stolen time, that is. I felt I had no choice but to do it that way. Like millions of others who work for a living, I was giving most of my prime time to my employer. My job simply didn't leave me enough energy for a major project of my own, and no one was about to hire me to pursue my own vision. . . So I began spending some office time on my own work, dumped my TV to reappropriate some of my time at home, and wrote this book.

Introduction to *Disciplined Minds*. See Affidavits of Marc H. Brodsky ("Brodsky Aff.") and James H. Stith ("Stith Aff.") submitted herewith, at ¶ 12 and ¶ 20 respectively, and Exhibits C and A thereto.

Having proclaimed to the world that he wrote his book using "stolen" company time, while he was receiving a salary from AIP and was expected to devote his time to AIP's work assignments, Schmidt now has the audacity to complain that (1) his discharge was in breach of contract,¹ (2) AIP breached an alleged "covenant of good faith and fair dealing,"² (3) AIP violated his "due process rights" and statutory rights under 42 U.S.C. §1983, and (4) AIP intentionally inflicted emotional distress upon him in connection with his discharge.

AIP submits this Reply Brief in support of its Motion to transfer venue. Mr. Schmidt's primary argument in opposition to Defendant's Motion -- that he worked from home -- is not relevant to the venue analysis, nor is it true. Schmidt's allegations of inconvenience should he be required to litigate in Maryland--in a courthouse very near the office where he worked for seven years -- and his indignant accusations of "forum shopping" also ring hollow. For all of the reasons set forth in AIP's initial Motion and below, the Court should transfer this case to the District Court for the District of Maryland.³

¹ This claim is meritless. Plaintiff was an at-will employee. He had no employment contract. Brodsky Aff. at ¶ 4; Stith Aff. at ¶ 5.

² Schmidt's claim that AIP did not act in "good faith" toward him, in light of his shameless admission that he "stole" company time in order to write a book, is beyond comprehension.

³ Mr. Schmidt claims that he "recall[s] receiving one e-mail message, not two, from Defendant asking if I would consent to a transfer of venue." Schmidt Aff. at ¶ 3. AIP's counsel actually sent Mr. Schmidt *three* e-mails over a three-week period asking for his consent (attached as Exhibit A). Mr. Schmidt finally "responded [to the third email] by suggesting that we discuss the issue at the 'Duty to Confer' meeting." Schmidt Aff. at ¶ 3. At the meeting, Mr. Schmidt stated that he could not give consent to the motion without first reading the papers (which he had received 1-2 days before the meeting). Mr. Schmidt's implication that he might have consented had Defendant given him sufficient opportunity is false and disingenuous. Also disingenuous is Schmidt's assertion that AIP acted improperly by "asking me to consent to a transfer of venue when it was clearly not in my interest to do so." Plaintiff's Memorandum in Opposition to Defendant's Motion at 8 ("Plaintiff's Opposition"). Mr. Schmidt is well aware that AIP only sought his consent in order to comply with the Court's local rules. AIP's counsel explained this to him in their first e-mail on the subject. See Exhibit A.

FACTS AND ARGUMENT

I. Venue is Not Proper in the District of Columbia

Plaintiff asserts that "Defendant does not -- and cannot -- allege that venue is inappropriate or improper in the District of Columbia." Plaintiff's Memorandum in Opposition to Defendant's Motion at 1 ("Plaintiff's Opposition"). This assertion is incorrect. As AIP stated in its Motion, "if Plaintiff originally had filed this action in the United States District Court, District of Columbia, venue would have been improper." *See* Motion at 8 and §A(2).⁴

28 U.S.C. §1391(b)(1)(2) provides, in pertinent part, that

“[a] civil action wherein jurisdiction is not founded solely on diversity of citizenship may ... be brought only in (1) a judicial district wherein any defendant resides ..., or (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred...”.

Jurisdiction in this action is not founded solely on diversity of citizenship, as Plaintiff asserts a claim based on 42 U.S.C. §1983. Plaintiff does not dispute that AIP resides in College Park, Maryland (which is located within the judicial District of Maryland, Southern Division). Therefore, venue is proper in D.C. only if "a substantial part of the events or omissions giving rise to the claim" occurred in D.C. They did not. All of the events giving rise to the Plaintiff's claims arose within the District of Maryland, where Defendant is located and Plaintiff worked.

A. Even if Plaintiff's Factual Assertions are True, "A Substantial Part of the Events or Omissions Giving Rise to the Claim" did not Occur in the District of Columbia.

In his opposition to Defendant's Motion, Plaintiff contends, inexplicably, that he worked from home during the last several years of his employment with AIP. However, even if

⁴ In answering Plaintiff's Complaint in the instant matter, Defendant raised the affirmative defense of improper venue. *See* Defendant's Amended Answer at ¶ 9.

true (*See* Section B below) this would not change the location of the events about which he complains. In his Complaint, Plaintiff asserts that AIP (1) breached alleged written and oral contracts of employment;⁵ (2) violated 42 U.S.C. §1983; (3) breached covenants of good faith and fair dealing; (4) violated his due process; and, (5) intentionally inflicted emotional distress. *See* Plaintiff's Complaint. However, even if Plaintiff was working from his home in D.C. -- a charge that AIP disputes -- Plaintiff's managers were not working in Plaintiff's home when they allegedly committed the acts about which Plaintiff complains. The decision to discharge Mr. Schmidt—and the actual discharge itself—occurred in College Park. *Stith Aff.* ¶¶ 22-23.

Similarly, Plaintiff offers a long, bulleted list of alleged connections to the District of Columbia, most of which arise from the fact that he chose to live there. Plaintiff's Opposition at 5-6. These items include, for example, that he resides in D.C; AIP hired a real estate agent and moving company to assist him when he relocated to the D.C. (in 1993); and AIP paid part of the cost of a computer and provided software to Plaintiff to allow him to dial-in to work from home. Plaintiff's Opposition at 5-6. Plaintiff summarizes these points on page 6, and concluding that "many or most of the events giving rise to this litigation occurred in the District of Columbia." Plaintiff's Opposition at 6.

The items listed by Plaintiff, even if true,⁶ have nothing to do with the "events giving rise to this case." Instead, they address his allegation that he lived in the D.C. and (allegedly) worked from home. These assertions do not affect the "events giving rise to this

⁵ Plaintiff's breach of contract claim apparently is predicated on his claim that AIP begged him to remain at its workplace, and in exchange for his purported agreement to do so, AIP allegedly promised to "judge [him] on [his] work performance alone." Schmidt's claim is nonsensical. He was an at-will employee and had no written or oral employment agreement.

⁶ AIP addresses the veracity of Plaintiff's assertions below.

litigation," which are alleged actions and decisions *by AIP management* that occurred in College Park.⁷

Plaintiff also claims that he had meetings with co-workers as part of alleged "workplace activism" that he claims precipitated his discharge. Plaintiff's Opposition at 5. Plaintiff's supervisors are unaware of any such meetings. *See Brodsky Aff.* at ¶ 11. It stands to reason that AIP could hardly have discharged Mr. Schmidt in retaliation for offsite meetings with co-workers of which it had no knowledge.⁸

Mr. Schmidt further claims that during what he contends was a critical conversation with AIP's Executive Director, Marc Brodsky, he was in his home. These facts, even if true, have no bearing on the location of the events giving rise to this case. As set forth above, Mr. Schmidt's discharge had nothing to do with this conversation. Regardless, during this conversation, Mr. Brodsky believed Mr. Schmidt to be in his office in College Park, where Mr. Schmidt regularly was believed to be during the work day. *Brodsky Aff.* at ¶ 8.⁹

Schmidt should not be permitted to unilaterally create venue in the District of Columbia simply because he allegedly telecommuted without the knowledge of his employer.

⁷ Plaintiff also contends that he "filed [his] National Labor Relations Board charge against AIP at the NLRB's District of Columbia office." (Schmidt Aff. at ¶ 26). This is false. AIP's records indicate that Mr. Schmidt's administrative charge was filed in the National Labor Relations Board's Baltimore, Maryland office. *Brodsky Aff.* at ¶ 5 and Exhibit A thereto. Plaintiff asserts that the NLRB found he had "established a prima facie case" that he was discharged for engaging in protected concerted activities. Plaintiff's Opposition at 2. Plaintiff neglects to mention that the NLRB's Baltimore, Maryland office found "insufficient evidence of a violation" and *dismissed* Mr. Schmidt's charge. *See Brodsky Aff.*, Exhibit B.

⁸ Mr. Schmidt also contends that AIP put a "gag order" on him. (Schmidt Aff. at ¶ 28). This is entirely untrue. AIP is unaware of any action toward Mr. Schmidt that could be construed as a "gag order." *Brodsky Aff.* at ¶ 7.

⁹ During this conversation, Mr. Schmidt expressed concerns about the number of non-whites and females who served as editors of *Physics Today*. Mr. Brodsky perceived his charge to be a serious one, and he took Mr. Schmidt's concerns seriously. *Brodsky Aff.* at ¶ 9. He personally conducted an investigation of AIP's internal policies and practices regarding diversity in an attempt to address Mr. Schmidt's concerns. *Brodsky Aff.* at ¶ 9. He instructed every person with whom he spoke as part of the investigation not to criticize Mr. Schmidt for raising these issues. Mr. Schmidt's characterization of this conversation as "harsh criticism" simply is incorrect. On the contrary, Mr. Brodsky told Mr. Schmidt he was glad he brought the issue to Mr. Brodsky's attention, that he took Mr. Schmidt's claims seriously, and that he would investigate his concerns. *Brodsky Aff.* at ¶ 10.

For all of these reasons, Plaintiff's assertion that he worked from home is irrelevant to the venue analysis, and should be disregarded.

B. Plaintiff's Place Of Employment Was College Park, Maryland

Even if relevant, Plaintiff's assertion that he primarily worked out of his home in the District of Columbia, rather than at AIP's College Park offices, is patently untrue. *See* Plaintiff's Affidavit ("Schmidt Aff.") at ¶¶ 8, 9, 12. AIP has no knowledge that Plaintiff worked from home other than on an occasional basis, and solely for his own convenience (and not AIP's). Moreover, in light of Plaintiff's admission that he "stole time" from AIP in order to write a book, his contention that he "worked" from home is suspect. Indeed, it is ironic that Schmidt asserts that the District of Columbia is an appropriate venue for his lawsuit as a result of his own unauthorized activities (*i.e.*, having "stolen" time from AIP to pursue his own lucrative publishing projects), while he admittedly was supposed to be working for AIP in College Park.

1. AIP Did Not Require, Or Request, That Plaintiff Live In The District of Columbia

Mr. Schmidt worked for AIP in New York from 1981 to 1993. In 1993, AIP moved its corporate offices to College Park, Maryland. Mr. Schmidt, along with many other AIP employees, relocated to the College Park, Maryland area.¹⁰ When relocating Mr. Schmidt elected to live in the District of Columbia. AIP neither required nor encouraged Mr. Schmidt to live in the District of Columbia. AIP had no opinion whatsoever regarding where Mr. Schmidt chose to live. *Stith Aff.* at ¶ 6.

¹⁰ Plaintiff dismisses Theresa Braun's affidavit as submitted by an "upper-echelon official who is apparently unfamiliar with my work history at Defendant." Plaintiff's Opposition at 4. Ms. Braun, AIP's Director of Human Resources, works in College Park and is well aware of Mr. Schmidt's work history. She has been employed by AIP for approximately 16 years. Supervisors in Mr. Schmidt's chain of command, like Ms. Braun and Dr. Stith, have no knowledge of any telecommuting arrangement involving Plaintiff. *See Stith Aff.*, submitted herewith.

AIP provided moving expenses for all of its employees who were required to relocate. AIP also provided the services of a real estate agent to assist its employees in finding new homes. Mr. Schmidt was treated the same as numerous other AIP employees in this regard. Stith Aff. at ¶ 7. Mr. Schmidt's statement that "AIP hired a real estate agent help me find somewhere to live in the District of Columbia" is simply not true. AIP hired a real estate agent to assist Mr. Schmidt, and many others, to find a home in the location of their choosing in the College Park, Maryland area. AIP did not request or require that Mr. Schmidt live in the District of Columbia. That was his decision. Stith Aff. at ¶ 8.

Similarly, Mr. Schmidt's statement that "AIP hired a moving company to pack all of my personal belongings and home furniture and move them from New York to the District of Columbia" is misleading. The moving company brought Mr. Schmidt's belongings to the District of Columbia because that is where he chose to live. It was Mr. Schmidt's personal choice to live in the District of Columbia. AIP played no role in that decision. Stith Aff. at ¶ 9.

2. Plaintiff Worked For AIP In Its College Park, Maryland Offices

Mr. Schmidt's statement that he "worked for AIP in the District of Columbia from July 25, 1997 until AIP fired me on May 31, 2000" (Schmidt Aff. at ¶ 8) is entirely false. From 1993 until 2000, Mr. Schmidt worked for AIP in its College Park, Maryland office. Stith Aff. at ¶ 10. Mr. Schmidt implies that from 1997 through 2000, AIP requested, or at least condoned, that he work from home on a regular basis. This is false. AIP never agreed to permit Mr. Schmidt to work from home on a regular basis and has no knowledge that he did so. Like many employees, Mr. Schmidt occasionally worked from home for personal reasons. However, AIP had no arrangement or agreement with Mr. Schmidt that would permit him to work from home as a rule. Stith Aff. at ¶ 11.

Mr. Schmidt also implies that on the occasions he worked from home, he did so for AIP's benefit. This is not true. Mr. Schmidt apparently worked from home, on occasion, for personal reasons. AIP derived no benefit from this. It did not request that he do so. Stith Aff. at ¶ 13.

(a) **Plaintiff Voluntarily Became a Part-Time Employee In June 1999**

Mr. Schmidt's statement that "from July 25, 1997, until AIP fired me on May 31, 2000, I worked for AIP at my home office in the District of Columbia four days a week, and at *Physics Today's* main office only one day a week" (Schmidt Aff. at ¶ 17) is false. Stith Aff. at ¶ 12. As an initial matter, Mr. Schmidt took a six-month sabbatical from January through May of 1999, during which he performed no work for AIP at all. Stith Aff. at ¶ 12. Upon his return from sabbatical, Mr. Schmidt requested, and was granted, permission to become a part-time employee. He remained a part-time employee until his discharge. Accordingly, he did not work five days per week starting in June 1999. Stith Aff. at ¶ 12. Mr. Schmidt's supervisors believed that when he was working, he was doing so in the College Park office except for when he occasionally chose to work from home. Stith Aff. at ¶ 12.

(b) **Plaintiff Had An Office At Defendant's College Park Headquarters**

Mr. Schmidt's statement that as of May 31, 2000, he "no longer had [his] own office at *Physics Today's* main office to use when [he] visited there" also is not true. Mr. Schmidt did not "visit" AIP's College Park, Maryland office; he ***worked there*** until his discharge on May 31, 2000. Stith Aff. at ¶ 14. Starting in or around January 1999, Mr. Schmidt shared office space with another employee because, ***at his request, Mr. Schmidt had become a part-time employee.*** Mr. Schmidt worked 2/3 of each week. In order to accommodate Mr. Schmidt, another employee was hired to perform the remaining 1/3 of Mr. Schmidt's job. The employee

with whom Mr. Schmidt shared his job also shared his office. Mr. Schmidt's nameplate remained on the door of that office until his discharge on May 31, 2000. Stith Aff. at ¶ 15. Moreover, AIP did not "reduce overhead costs" as a result of this arrangement. In fact, overhead costs were increased because AIP had to hire another person to do part of Mr. Schmidt's job. Stith Aff. at ¶ 15.

(c) **Plaintiff Was Not Provided Computer Equipment or Software As Part Of Any Special Arrangement with AIP**

AIP has a policy of providing computer software allowing remote computer access, and paying one-half, up to a maximum of \$1,000, the cost of a home computer for certain exempt employees. Mr. Schmidt took advantage of this policy to receive reimbursement for a portion of the cost of his home computer. AIP never requested that he work from home.¹¹ The fact that an employee obtains reimbursement under this policy is not an indication that the employee is authorized to telecommute on a regular basis. Moreover, even on the occasions when Mr. Schmidt allegedly worked from home, he worked on a computer that was connected to AIP's server in College Park, Maryland; sent and received e-mails through the College Park office; and submitted his work product to AIP employees in College Park. Stith Aff. at ¶ 17.

(d) **Mr. Schmidt Attended Staff Meetings In College Park**

Mr. Schmidt's statement that he "participated in *Physics Today* staff meetings by telephone (speakerphone) from the District of Columbia" is not entirely true (Schmidt Aff. at ¶ 20). Dr. Stith frequently attends *Physics Today* staff meetings. He regularly saw Mr. Schmidt physically present at staff meetings he attended starting in January 1998. Stith Aff. at ¶ 18.

¹¹ There are some AIP employees who AIP explicitly has authorized to work from home. For those individuals, AIP pays the *entire cost of a home computer*. Mr. Schmidt was not one of these individuals. Stith Aff. at ¶ 16.

In sum, as set forth above, the events or omissions giving rise to Plaintiff's claim arose in College Park, Maryland. Accordingly, venue is improper and the case should be transferred to the District of Maryland.

II. "The Convenience Of Parties And Witnesses, And The Interest Of Justice," Counsel in Favor of Transfer to the District of Maryland.

Schmidt contends, without authority, that "the test is whether the claim could have been brought in the jurisdiction in which I brought it -- the District of Columbia -- and if so, whether overriding considerations mandate transferring the case somewhere else." Plaintiff's Opposition at 3. As the foregoing analysis shows, this case could not have been brought in this Court. Even if venue were appropriate in the District of Columbia (which it is not), Plaintiff fails to adequately address AIP's contentions that the convenience of parties and witnesses, and the interest of justice, counsel in favor of a transfer to the District of Maryland.

28 U.S.C. § 1404(a) provides that a District Court may transfer a civil action to another district where it might have been brought "for the convenience of parties and witnesses, in the interest of justice." In analyzing whether to exercise its discretion to transfer venue, a district court examines whether 1) the action might originally have been brought in the district to where transfer is sought; and, 2) the interests of the parties, the witnesses and justice support venue transfer. *Id.* at 5-6. Kafack v. Primerica Life Insurance Co., 934 F. Supp. 5-6 (D.D.C. 1996) (internal citations omitted). Plaintiff's alleged telecommuting from the District of Columbia is irrelevant to this analysis.

A. Plaintiff Cannot Demonstrate That He Will Be Inconvenienced By Transfer Of This Matter to The District of Maryland

Plaintiff's primary argument regarding the second prong of the venue analysis, is that it is inconvenient for him to travel to the Federal courthouse in Maryland because he allegedly does not own a car. Plaintiff complains that he would be required to take "two trains

and a bus" in order to appear at the Federal Courthouse in Greenbelt, Maryland. However, the Greenbelt metro stop is only one stop further on the Green line than AIP's offices in College Park, where Schmidt admits he commuted daily for several years. Schmidt Aff. at ¶¶ 7 and 15.¹² The only difference between a trip to the Greenbelt Courthouse, and Mr. Schmidt's daily commute to AIP, is remaining on the train for one additional stop, then taking a 9 minute bus ride to the Courthouse.¹³ If Schmidt could commute daily to College Park, he easily can ride the train one additional stop and take a short bus ride to appear occasionally, as needed, at the Courthouse.

Schmidt also claims that transfer to Maryland would "deprive [him] of representation" because his alleged attorney¹⁴ is not admitted to practice in Maryland. Significantly, Schmidt's alleged attorney is not admitted to practice in *this Court*.¹⁵ It should be just as easy for Schmidt's purported counsel to obtain admission to this Court as it is for him to be admitted in the District of Maryland.

¹² Plaintiff also makes much of the fact that there was a minor inconsistency between AIP's brief and Ms. Braun's Affidavit. The Affidavit correctly stated that Plaintiff worked at AIP's campus in College Park, Maryland from October 1993 to the time he was discharged. Braun Aff. at ¶ 9.

¹³ This information was obtained through a telephone call to the Washington Metropolitan Area Transit Authority, which runs the Metro.

¹⁴ Schmidt seeks the best of both worlds regarding his alleged pro se status. He characterizes himself as "Plaintiff pro se," Plaintiff's Opposition at 1, but his brief undeniably benefited from an attorney's input. Mr. Schmidt's counsel allegedly entered his appearance in the case immediately prior to the parties' initial meeting, then immediately withdrew. See footnote 15 below.

¹⁵ When planning the parties' initial conference, AIP's attorneys agreed to meet with Mr. Schmidt's "legal advisor," Ross Guberman, only if he entered his appearance in the case. See Exhibit B. Mr. Guberman represented to AIP's counsel that he had filed a notice of appearance on Plaintiff's behalf, and he provided a copy of this notice at the conference. On the face of the notice, Mr. Guberman wrote, "Copy mailed to DC District Court via U.S. Mail 10/28/03." (see Exhibit B). The morning after the conference, Defendant's attorneys received a communication from Mr. Guberman indicating that his membership to this Court's bar had lapsed and accordingly, he would be required to withdraw from the case. Mr. Guberman's motion to withdraw was served on November 3, 2003. The motion indicates that Mr. Schmidt is again representing himself pro se.

B. Plaintiff Has Not Demonstrated That Witnesses In This Matter Will Be Inconvenienced By Transfer

As set forth in Defendant's initial Memorandum, substantially all of the witnesses (along with all of the documents) in this case are located in Maryland. Plaintiff's argument that witnesses from New York and Virginia "would be more likely to testify if the trial were held at the courthouse in the District of Columbia than if it were held in Maryland" is nonsense. Plaintiff offers no factual or legal support for this proposition. It has no basis whatsoever.¹⁶

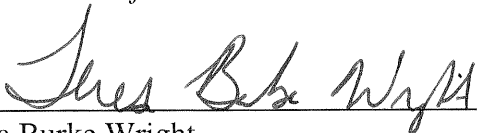
CONCLUSION

For the reasons set forth above and in Defendant's Motion, substantially all of the witnesses in this case are located in Maryland; the relevant documents are located in Maryland (a fact that Plaintiff does not dispute); and the non-federal claims asserted in Plaintiff's Complaint will be adjudicated pursuant to Maryland law. Defendant respectfully requests that an order be entered transferring this case to the United States District Court for the District of Maryland, Southern Division, and award it such other and further relief as the Court deems just and proper.

Dated: November 14, 2003

JACKSON LEWIS LLP
ATTORNEYS FOR DEFENDANT
8614 Westwood Center Drive, Suite 950
Vienna, Virginia 22182
(703) 821-2189
(703) 821-2267 *facsimile*

By: _____

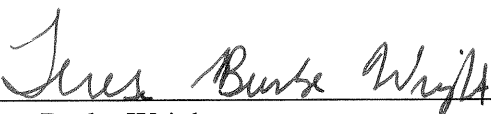

Teresa Burke Wright

¹⁶ Plaintiff accuses AIP of "forum shopping". Plaintiff's indignation at AIP's alleged "forum shopping" is disingenuous. Indeed, Plaintiff's accusation can easily be leveled at himself. Plaintiff's Opposition indicates a keen awareness of the "demographics" of the District of Columbia and the District of Maryland. Plaintiff's Opposition at 1, 2, 8. AIP submits that, if anything, it is Plaintiff's decision to file his lawsuit in the District of Columbia rather than College Park, where he worked for several years, that is suspect.

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of November, 2003, I caused a true and correct copy of the foregoing Defendant's Reply Brief in Support of its Motion and Memorandum of Law in Support of its Motion to Transfer Venue from the United States District Court, District of Columbia to the United States District Court for the District of Maryland, Southern Division to be served, via First-Class Mail, by depositing said copy into an official U.S. Postal Service depository addressed as follows:

JEFF SCHMIDT
PLAINTIFF PRO SE
3003 Van Ness Street, NW #W406
Washington, DC 20008



Teresa Burke Wright

Wright, Teresa Burke (DC)

From: Wright, Teresa Burke (DC)
Sent: Wednesday, October 08, 2003 11:26 AM
To: 'Jschmidt222@aol.com'
Subject: FW: Schmidt v. American Institute of Physics

Hello Mr. Schmidt:

I have not heard from you regarding our request below that you advise me whether you will consent to a motion to transfer this case to the U.S. District Court for the District of Maryland. We plan to file this motion early next week. Please contact me at your earliest convenience to advise whether or not you will consent.

In addition, I understand you contacted Judge Urbina's chambers yesterday to communicate some concerns you have about this case. It is my understanding that Judge Urbina's clerk directed you to contact me directly to address these issues. We are unaware of the nature of your concerns but remain available to discuss them at your convenience.

Very truly yours,

Teresa Wright

-----Original Message-----

From: Wright, Teresa Burke (DC)
Sent: Thursday, September 18, 2003 3:36 PM
To: 'Jschmidt222@aol.com'
Subject: Schmidt v. American Institute of Physics

Hello Mr. Schmidt:

Under the local rules of the DC District Court, the parties are required to to discuss any nondispositive motions that will be filed. We are planning to file a motion to transfer this case to the U.S. District Court for the District of Maryland. The grounds for the motion are that DC is an inconvenient forum because you were employed in Maryland, AIP is located in Maryland, and all of the witnesses and documents in the case are in Maryland. Please advise me if you will consent to this motion. If you wish to discuss this further, please give me a call.

Also, I will be out of the office next week. When I return, I will contact you to schedule our meeting regarding scheduling.

Best regards,

Teresa Wright

~~~~~

Teresa Burke Wright  
Jackson Lewis LLP  
8614 Westwood Center Drive  
Suite 950  
Vienna, VA 22182

11/14/2003

DEFENDANT'S  
EXHIBIT

A

**Telephone 703 821-2189**  
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**Representing management exclusively in workplace law and related litigation.**

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**Wright, Teresa Burke (DC)**

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**From:** Wright, Teresa Burke (DC)  
**Sent:** Wednesday, October 08, 2003 2:36 PM  
**To:** 'Jschmidt222@aol.com'  
**Subject:** RE: Schmidt v. AIP / meeting

Dear Mr. Schmidt,

Wednesday the 22nd will not work because I am out of town. How about Tuesday, October 28 at 1:30 p.m.?

Also, we will not agree to meet with the "legal advisors" you referred to in an earlier email. We will only meet with attorneys who have entered an appearance in the case and actually represent you.

Please advise me at your convenience whether the October 28 date will work, and also whether you will consent to our motion to transfer venue as I requested earlier.

Teresa Wright

-----Original Message-----

**From:** Jschmidt222@aol.com [mailto:Jschmidt222@aol.com]  
**Sent:** Wednesday, October 08, 2003 1:32 PM  
**To:** Wright, Teresa Burke (DC)  
**Subject:** Schmidt v. AIP / meeting

Dear Ms. Wright,

I phoned the court to find out how we should proceed, in light of the fact that we are past the date by which we were supposed to have our "duty to confer" meeting. The clerk tried to get you on the line, but you were away from your desk, and so I didn't get any guidance. I think we should follow the principle "better late than never," and just go ahead and have the meeting. If you agree, then how about 1:30 pm, Wednesday 22 October 2003, in Washington, D.C.?

Jeff Schmidt

-----  
Jeff Schmidt  
3003 Van Ness Street NW #W406  
Washington, DC 20008

Copy mailed to  
DC District Court  
VIA US MAIL  
10/28/03

# United States District Court

DISTRICT OF COLUMBIA

## APPEARANCE

CASE NUMBER: CV 103 01691

To the Clerk of this court and all parties of record:

Enter my appearance as counsel in this case for

Jeff Schmidt  
plaintiff

10/27/03

Date

VA 42819  
DL 466600

BAR IDENTIFICATION NO.

*[Signature]*

Signature

Ross Guberman

Print Name

902 Ridge Dr

Address

McLean VA 22101

City

State

Zip Code

703 848 2110

Phone Number

DEFENDANT'S  
EXHIBIT

B

JEFF SCHMIDT,  
  
Plaintiff,  
  
-against-  
  
AMERICAN INSTITUTE OF PHYSICS,  
  
Defendant.

Civil Action No.: 1:03CV01691  
**(RMU)**

STATE OF MARYLAND )  
 )ss.:  
COUNTY OF PRINCE GEORGE'S )

1. I am not a party to the above-captioned action. I make the statements herein based upon my own personal knowledge, except such matters as are alleged on information and belief, and as to those matters, I believe them to be true.

3. I am AIP's Executive Director and CEO. At the time of Jeff Schmidt's discharge, his direct supervisor was Stephen G. Benka, Editor of Physics Today magazine. Dr. Benka reports to Randolph A. Nanna, Publisher of Physics Today. Mr. Nanna reports to Dr. James H. Stith. Dr. Stith reports to me.

4. At all times during Mr. Schmidt's employment with AIP, he was employed at will. He had no employment contract.

5. In Mr. Schmidt's Affidavit submitted in opposition to Defendant's motion to transfer venue, he contends that he "filed [his] National Labor Relations Board charge against AIP at the NLRB's District of Columbia office." (Schmidt Affidavit at ¶ 26). This is false. AIP's records indicate that Mr. Schmidt's administrative charge was filed in the National Labor Relations Board's Baltimore, Maryland office. See Exhibit A.

6. The NLRB's Baltimore, Maryland office found "insufficient evidence of a violation" and dismissed Mr. Schmidt's charge. See Exhibit B.

7. Mr. Schmidt also contends that AIP put a "gag order" on him. (Schmidt Affidavit at ¶ 28). This is entirely untrue. To my knowledge, no one at AIP took any action toward Mr. Schmidt that could be construed as a "gag order."

8. Paragraph 29 of Mr. Schmidt's Affidavit describes a telephone conversation with me in which he claims that I "delivered. . . harsh criticism." As an initial matter, although Mr. Schmidt asserts that he was at home in the District of Columbia when this conversation occurred, I was unaware that he was not in AIP's offices in College Park when we started to speak. I had phoned Mr. Schmidt on that occasion in his office at AIP's College Park headquarters and left him a message. He returned my call. At first, I believed he was in his office in College Park. It was not until later in that conversation that I realized he was at home.

9. During the conversation described in the paragraph above, Mr. Schmidt expressed concerns about the number of non-whites and females who served as editors of *Physics Today*. As stated in Mr. Schmidt's Affidavit, I perceived his charge to be a serious one. I took his concerns seriously. Accordingly, I personally conducted an investigation of AIP's

internal policies and practices regarding diversity in an attempt to address Mr. Schmidt's concerns. I instructed every person with whom I spoke as part of my investigation not to criticize Mr. Schmidt for raising these issues.

10. Mr. Schmidt's characterization of our conversation as "harsh criticism" simply is incorrect. On the contrary, I told Mr. Schmidt that I was glad he brought the issue to my attention, that I took his claims seriously, and that I would investigate his concerns.

11. In his Affidavit, Mr. Schmidt also contends that he engaged in "workplace activism" that included meeting with co-workers in the District of Columbia. AIP is unaware of any such meetings. To my knowledge, Mr. Schmidt never was asked to meet with co-workers in the District of Columbia in connection with AIP business.

12. Mr. Schmidt was not discharged because of any "workplace activism." Instead, Mr. Schmidt was discharged because in a book he wrote and published in 2000, he publicly proclaimed that he had "stolen" work time from AIP in order to write his book. The introduction to Mr. Schmidt's book read:


This book is stolen. Written in part on stolen time, that is. I felt I had no choice but to do it that way. Like millions of others who work for a living, I was giving most of my prime time to my employer. My job simply didn't leave me enough energy for a major project of my own, and no one was about to hire me to pursue my own vision. . . . So I began spending some office time on my own work, dumped my TV to reappropriate some of my time at home, and wrote this book.<sup>1</sup>

See Exhibit C.

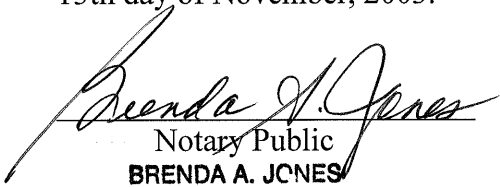
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<sup>1</sup> In this introduction, Mr. Schmidt himself differentiates between the time he spent in the "office" (e.g., AIP's College Park office) and at home.

13. Mr. Schmidt's claim that his discharge was unlawful is frivolous. Mr. Schmidt caused his own discharge by his admission that he "stole" time from AIP to write an almost 300 page book. No employee is entitled to use work time for his private pursuits, instead of doing the job he is being paid to do. Schmidt's bold admission could not go unaddressed. To do so would be to publicly condone Mr. Schmidt's admission that he "stole" time from AIP and ignore the dedicated contributions of AIP's hundreds of other workers. Mr. Schmidt was discharged because he publicly announced that he had spent his work time writing a book rather than working on AIP's projects, and flaunted it.

  
MARC H. BRODSKY

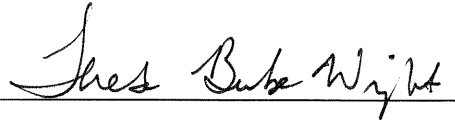
Sworn to before me this  
13th day of November, 2003.

  
Notary Public  
**BRENDA A. JONES**  
Notary Public, State of Maryland  
County of Prince Georges  
Commission Expires May 26, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of November, 2003, I caused a true and correct copy of the enclosed Affidavit of Marc Brodsky to be served via First-Class Mail, by depositing said copy into an official U.S. Postal Service depository addressed as follows:

JEFF SCHMIDT  
*PLAINTIFF PRO SE*  
3003 Van Ness Street, NW #W406  
Washington, DC 20008



Teresa Burke Wright

FORM NLRB-501

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
FIRST AMENDED CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

| DO NOT WRITE IN THIS SPACE |                        |
|----------------------------|------------------------|
| Case<br>5-CA-29366         | Date Filed<br>01-04-01 |

## INSTRUCTIONS

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

## 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

|                                                                                                                                                                                                                                                                                               |                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| a. Name of Employer<br>American Institute of Physics                                                                                                                                                                                                                                          | b. Number of workers employed<br>approx. 500  |
| c. Address (street, city, state, ZIP code)<br>1 Physics Ellipse<br>College Park, MD 20740                                                                                                                                                                                                     | d. Employer Representative<br>Marc H. Brodsky |
| f. Type of Establishment (factory, mine, wholesaler, etc.)<br>Publishing company                                                                                                                                                                                                              | e. Telephone No.<br>301 209 3100              |
| g. Identify principal product or service<br>Physics journals                                                                                                                                                                                                                                  |                                               |
| h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act. |                                               |

## 2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about May 31, 2000, the above-named Employer, by its officers and agents, interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act by terminating under pretext the employment of Jeff Schmidt, senior associate editor, because of his protected concerted activities and because he advocated formation of a union at the workplace.

Since on or about August 29, 2000, the above-named Employer, by its officers and agents, announced a rule prohibiting staff members from discussing their performance reviews with other staff members.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act

## 3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Jeff Schmidt

## 4a. Address (street and number, city, state, and ZIP code)

3003 Van Ness Street, NW, W406  
Washington, DC 20008

## 4b. Telephone No.

202 537 3645

## 5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

N/A

## 6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By

Jeff Schmidt  
(signature of representative or person making charge)

Jeff Schmidt

Individual  
(title if any)

Address 3003 Van Ness Street, NW, W406  
Washington, DC 20008

202 537 3645  
(Telephone No.)

1/4/01  
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE

TPM

DEFENDANT'S  
EXHIBIT

A

United States Government  
NATIONAL LABOR RELATIONS BOARD

Region 5  
103 South Gay Street, 8th Floor  
Baltimore, MD 21202-4061

Telephone: (410) 962-2822  
Facsimile: (410) 962-2198

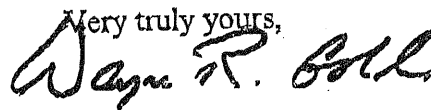
January 12, 2001

American Institute of Physics  
Mr. Marc H. Brodsky  
1 Physics Ellipse  
College Park, MD 20740

Re: Case 5-CA-29366-1

Dear Mr. Brodsky:

I am enclosing herewith a copy of the First Amended charge filed in the above-captioned case.

Very truly yours,  


Wayne R. Gold  
Regional Director

Enclosures

cc: Jackson, Lewis, Schnitzler & Krupman  
Mr. Mark L. Sussman  
1000 Woodbury Road, Suite 402  
Woodbury, NY 11197

Mr. Jeff Schmidt  
3003 Van Ness St., NW  
Washington, DC 20008



United States Government  
NATIONAL LABOR RELATIONS BOARD  
Region 5  
103 South Gay Street, 8th Floor  
Baltimore, MD 21202-4061

(410) 962-2822

February 9, 2001

MR. JEFF SCHMIDT  
3003 VAN NESS ST., N. W.  
WASHINGTON, D. C. 20008

Re: American Institute of Physics  
Case 5-CA-29366

Dear Mr. Schmidt:

The above-captioned case, charging violations under Section 8 of the National Labor Relations Act, as amended, has been carefully considered.

As a result of the investigation, it appears that, because there is insufficient evidence of a violation, further proceedings are not warranted at this time. I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations you may obtain a review of this action by FILING AN APPEAL WITH THE GENERAL COUNSEL of the National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, A COPY WITH ME and a copy with the Washington Resident Office, 1099 14th Street, N.W., Washington, DC 20570. This appeal must contain a complete statement setting forth the facts and the reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C. by the close of business at 5:00 p.m. EST on February 23, 2001. The appeal MAY NOT be filed by facsimile transmission. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. Requests for extension of time MAY be filed by facsimile transmission, and must be received no later than the time set forth above for the filing of the appeal. A copy of any such request for extension of time should be submitted to me. If you mail the appeal, it should be postmarked no later than one day before the due date set forth above.

DEFENDANT'S  
EXHIBIT

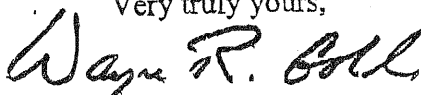
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February 9, 2001

If you file an appeal, please complete the notice forms enclosed with this letter and send one copy of the form to each of the other parties whose names and addresses are listed. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal to me within the time stated above.

Very truly yours,



Wayne R. Gold  
Regional Director

Enclosures

CERTIFIED MAIL NO. 7000 1670 0000 6921 9831  
RETURN RECEIPT REQUESTED

cc: GENERAL COUNSEL  
NATIONAL LABOR RELATIONS BOARD  
OFFICE OF APPEALS, ROOM 8820  
FRANKLIN COURT BUILDING  
1099 14TH STREET, N.W.  
WASHINGTON, DC 20570

ATTN: MR. MARK L. SUSSMAN  
JACKSON, LEWIS, SCHNITZLER,  
& KRUPMAN  
1000 WOODBURY RD., SUITE 402  
WOODBURY, NY 11197

ATTN: MR. MARC H. BRODSKY  
AMERICAN INSTITUTE OF PHYSICS  
1 PHYSICS ELLIPSE  
COLLEGE PARK, MD 20740

# INTRODUCTION

This book is stolen. Written in part on stolen time, that is. I felt I had no choice but to do it that way. Like millions of others who work for a living, I was giving most of my prime time to my employer. My job simply didn't leave me enough energy for a major project of my own, and no one was about to hire me to pursue my own vision, especially given my irreverent attitude toward employers. I was working in New York City as an editor at a glossy science magazine, but my job, like most professional jobs, was not intellectually challenging and allowed only the most constrained creativity. I knew that if I were not contending with real intellectual challenges and exercising real creativity—and if I were not doing anything to shape the world according to my own ideals—life would be unsatisfying, not to mention stressful and unexciting. The thought of just accepting my situation seemed insane. So I began spending some office time on my own work, dumped my TV to reappropriate some of my time at home, and wrote this book. Not coincidentally, it is about professionals, their role in society, and the hidden battle over personal identity that rages in professional education and employment.

The predicament I was in will sound painfully familiar to many professionals. Indeed, generally speaking, professionals today are not happy campers. After years of worshipping work, many seemingly successful professionals are disheartened and burned out, not because of their 70-hour workweeks, but because their salaries are all they have to show for their life-consuming efforts. They long for psychic rewards, but their employers' emphasis on control and the bottom line is giving them only increased workloads, closer scrutiny by management and unprecedented anxiety about job security. In this way the cold reality of employer priorities has led to personal crises for many of this country's 21 million professionals.

Burned-out professionals may not be immediately obvious to the casual observer, because typically they stay on the job and maintain their usual high level of output. But they feel like they are just going through the motions. They have less genuine curiosity about their work, feel less motivated to do it and get less

DEFENDANT'S  
EXHIBIT

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C

P. 18

NO. 1003

JACKSON LEWIS

5:44PM

JEFF SCHMIDT,  
Plaintiff,  
-against-  
AMERICAN INSTITUTE OF PHYSICS,  
Defendant.

Civil Action No.: 1:03CV01691  
(RMU)

STATE OF MARYLAND )  
 )ss.:  
COUNTY OF PRINCE GEORGE'S )

1. I am not a party to the above-captioned action. I make the statements herein based upon my own personal knowledge, except such matters as are alleged on information and belief, and as to those matters, I believe them to be true.

3. I have been employed with AIP for 5½ years. My current title is Vice President, Physics Resources. At the time of Jeff Schmidt's discharge, his direct supervisor was Stephen G. Benka, Editor of Physics Today magazine. Dr. Benka reports to Randolph A. Nanna, Publisher of Physics Today. Mr. Nanna reports to me.

4. Plaintiff Jeff Schmidt worked for AIP in New York from 1981 to 1993. In 1993, AIP moved its corporate offices to College Park, Maryland. Mr. Schmidt, along with many other AIP employees, relocated to the College Park, Maryland area.

5. It is my understanding that at all times during Mr. Schmidt's employment with AIP, he was employed at will. He had no employment contract.

6. It is my understanding that when relocating to the College Park, Maryland area, Jeff Schmidt elected to live in the District of Columbia. AIP neither required, nor encouraged Mr. Schmidt to live in the District of Columbia. AIP had no opinion whatsoever regarding where Mr. Schmidt chose to live in the College Park, Maryland metropolitan area.

7. AIP provided moving expenses for all of its employees who were required to relocate. AIP also provided the services of a real estate agent to assist its employees in finding new homes. Jeff Schmidt was treated the same as numerous other AIP employees in this regard.

8. Mr. Schmidt's statement that "AIP hired a real estate agent help me find somewhere to live in the District of Columbia" is simply not true. AIP hired a real estate agent to assist Mr. Schmidt, and many others, to find a home in the location of their choosing in the College Park, Maryland area. AIP did not request or require that Mr. Schmidt live in the District of Columbia. That was his decision.

9. Mr. Schmidt's statement that "AIP hired a moving company to pack all of my personal belongings and home furniture and move them from New York to the District of Columbia" is misleading. The moving company brought Mr. Schmidt's belongings to the District of Columbia because that is where he chose to live. It was Mr. Schmidt's personal choice to live in the District of Columbia. AIP played no role in that decision.

10. Mr. Schmidt's statement that he "worked for AIP in the District of Columbia from July 25, 1997 until AIP fired me on May 31, 2000" (Schmidt Affidavit at ¶ 8) is entirely false. From 1993 until 2000, Mr. Schmidt worked for AIP in its College Park, Maryland office.

11. Mr. Schmidt implies that from 1997 through 2000, AIP requested, or at least condoned, that he work from home on a regular basis. This is entirely false. AIP never agreed to permit Mr. Schmidt to work from home on a regular basis and has no knowledge that he did so. Like many employees, Mr. Schmidt occasionally worked from home for personal reasons. However, AIP had no arrangement or agreement with Mr. Schmidt that would permit him to work from home. Mr. Schmidt states that "from 1997 through 2000, when I worked for AIP in the District of Columbia, I worked a few days per month in Maryland." Schmidt Affidavit at ¶ 16. This is entirely false.

12. Mr. Schmidt's statement that "from July 25, 1997, until AIP fired me on May 31, 2000, I worked for AIP at my home office in the District of Columbia four days a week, and at *Physics Today's* main office only one day a week" (Schmidt Affidavit at ¶ 17) is false. As an initial matter, Mr. Schmidt took a six-month sabbatical from January through May of 1999, during which he performed no work for AIP at all. In addition, upon his return from sabbatical, Mr. Schmidt requested, and was granted, permission to become a part-time employee; accordingly, he did not work five days per week starting in June 1999. It was my understanding, and on information and belief the understanding of Mr. Schmidt's supervisors, that when Mr. Schmidt was working, he was doing so in the College Park office except for occasions when he chose to work from home.

13. Mr. Schmidt also implies that on the occasions he worked from home, he did so for AIP's benefit. This is entirely false. Instead, Mr. Schmidt apparently worked from home, on occasion, for personal reasons. AIP certainly did not request that he do so. AIP derived no benefit from Mr. Schmidt's occasionally working from home.

14. Mr. Schmidt's statement that as of May 31, 2000, he "no longer had [his] own office at *Physics Today's* main office to use when [he] visited there" is not true. Mr. Schmidt did not "visit" AIP's College Park, Maryland office; he worked there until his discharge on May 31, 2000.

15. Starting in or around January 1999, Mr. Schmidt shared office space with another employee because, *at his request, Mr. Schmidt became a part-time employee.* Mr. Schmidt worked 2/3 of each week. In order to accommodate Mr. Schmidt, another employee was hired to do the remaining 1/3 of Mr. Schmidt's job. The employee with whom Mr. Schmidt shared his job also shared his office. Mr. Schmidt's nameplate remained on the door of that office until his discharge on May 31, 2000. Moreover, AIP did not "reduce overhead costs" as a result of this arrangement. In fact, overhead costs were increased because AIP had to hire another person to do part of Mr. Schmidt's job. To the best of my knowledge, no one at AIP ever told Mr. Schmidt that his shared office "reduced overhead costs."

16. AIP has a policy of providing computer software allowing remote computer access, and paying one-half, up to a maximum of \$1000, the cost of a home computer for certain exempt employees. Mr. Schmidt took advantage of this policy to receive reimbursement for a portion of the cost of his home computer. The fact that an employee obtains reimbursement under this policy is not an indication that the employee is authorized to telecommute on a regular basis. In fact, there are some employees whose work requires them to

work from home. For those individuals, AIP pays the *entire cost of a home computer*. Mr. Schmidt was not one of these individuals.

17. Even on the occasions when Mr. Schmidt worked from home, he worked on a computer that was connected to AIP's server in College Park, Maryland; sent and received e-mails through the College Park office; and submitted his work product to AIP employees in College Park.

18. Mr. Schmidt's statement that he "participated in *Physics Today* staff meetings by telephone (speakerphone) from the District of Columbia" is not entirely true (Schmidt Affidavit at ¶20). I frequently attend *Physics Today* staff meetings. I regularly saw Mr. Schmidt physically present at staff meetings I attended starting in January 1998.

19. AIP does not pay "the salary of a congressional staff member," as Mr. Schmidt asserts. (Schmidt Affidavit at ¶21). AIP does not employ a congressional staff member.

20. Mr. Schmidt was not discharged because of any "workplace activism." Instead, Mr. Schmidt was discharged because in a book he wrote and published in 2000, he publicly proclaimed that he had "stolen" work time from AIP in order to write his manuscript. In his book, Mr. Schmidt stated:

This book is stolen. Written in part on stolen time, that is. I felt I had no choice but to do it that way. Like millions of others who work for a living, I was giving most of my prime time to my employer. My job simply didn't leave me enough energy for a major project of my own, and no one was about to hire me to pursue my own vision. . . So I began spending some office time on my own work...

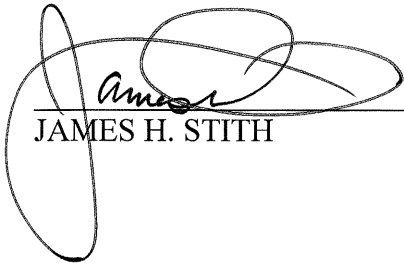
(See Exhibit A)

21. Mr. Schmidt caused his own discharge by his admission that he "stole" time from AIP to write an almost 300 page book. No employee is entitled to use work time for

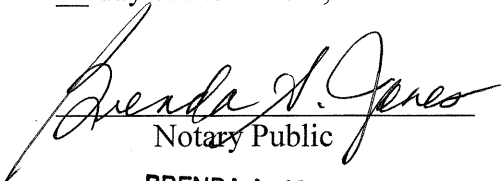
his private pursuits, instead of doing the job he is being paid to do. Schmidt's bold admission could not go unaddressed. To do so would ignore the full effort contributions of AIP's hundreds of other workers.

22. The decision to terminate Mr. Schmidt's employment was made in College Park, Maryland, and had no connection to the District of Columbia.

23. On the day he was discharged, Mr. Schmidt was at work in College Park, Maryland. AIP's decision to discharge Mr. Schmidt was communicated to him in College Park, Maryland.

  
JAMES H. STITH

Sworn to before me this  
13 day of November, 2003.

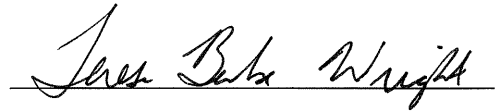
  
Notary Public

BRENDA A. JONES  
Notary Public, State of Maryland  
County of Prince Georges  
Commission Expires May 26, 2004

**CERTIFICATE OF SERVICE**

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JEFF SCHMIDT  
*PLAINTIFF PRO SE*  
3003 Van Ness Street, NW #W406  
Washington, DC 20008



Teresa Burke Wright

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DEFENDANT'S  
EXHIBIT

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P.

NO. 1003

JACKSON LEWIS

44PM